

<p align="center">STATE OF MONTANA</p> <p align="center">COMPLIANCE SUPPLEMENT FOR AUDITS OF</p> <p align="center">LOCAL GOVERNMENT ENTITIES</p>	REF: AUD-2
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<p>PROGRAM/SUBJECT: Schools and Roads - Grants to States (Forest Reserve) (CFDA No. 10.665) (Including Public Law 106-393 Provisions)</p>	

FEDERAL GRANTOR AGENCY: U.S. Department of Agriculture

TYPES OF RECIPIENTS: Counties and School Districts

SOURCE OF AUTHORIZATION
AND REGULATIONS: Sections 17-3-211 through 17-3-213, MCA
16 U.S.C. 500, Public Law 106-393

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I. PROGRAM OBJECTIVES:

The objective is to share receipts from National Forests with the States in which the National Forests are situated. The funds are to be used for the benefit of public schools and public roads of the county or counties in which the National Forest is situated. An additional objective, related to Public Law 106-393, the "Secure Rural Schools and Community Self-Determination Act of 2000", is to improve management of public lands and waters.

II. PROGRAM PROCEDURES:

Fees are collected for timber harvesting, as well as for minerals and land use on National Forests. Prior to July 1, 2001, 25% of these revenues were distributed by the U. S. Department of Agriculture to the State in which the National Forest was located under the Forest Reserve program. In Montana, the State Auditor's Office distributed the money to counties in proportion to the acreage of the National Forest (forest reserve) in each county. The county treasurer then distributed the moneys as required by State law, to benefit public schools and roads in the county.

The 2001 Legislature adopted legislation, effective July 1, 2001, to address the provisions of Public Law 106-393, the "Secure Rural Schools and Community Self-Determination Act of 2000" ("the Act"). Under the Act, a "full payment amount" is calculated for each State by determining the average of the three highest "25% payments" made to the State from 1986 through 1999 under the Forest Reserve program. This "full payment amount" is adjusted each year to reflect changes in the consumer price index. The counties then have the option of continuing to receive as their share a payment that is 25% of the revenue derived from national forest system lands, as provided in 16 U.S.C. 500, or to receive their share of the "full payment amount". That election was required to be made by September 2001. A county election to receive the 25% payment may be changed after two years, while an election to receive the full payment amount is final. The Act is in effect for six years, from 2001 to 2006.

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II. **PROGRAM PROCEDURES - continued:**

The U.S. Department of Agriculture (Forest Service) remits to the State Auditor's Office the sum of the amounts elected by the counties (with the exception of Title II monies - see discussion in following paragraph). The State Auditor's Office then distributes the money to the counties. If a county elects to receive the 25% payment, the county treasurer must distribute the moneys between county roads and schools, as required by Section 17-3-213(5), MCA. Counties receiving full payment amounts must distribute a minimum of 80% up to a maximum of 85% of the moneys in the same manner as the 25% payment. These counties must also, by September 30 of each year, make an election as to how the remaining 15% to 20% will be expended, in accordance with options provided in the Act. Under the Act, a county can reserve the balance for projects in accordance with Title II of the Act (these funds are deposited in a special account in the U.S. Treasury and are available for expenditure without further appropriation), reserve the balance for projects in accordance with Title III of the Act (these funds are reserved by the county), reserve the balance for projects in accordance with both Title II and Title III of the Act, or return the balance to the US Treasury. Counties receiving full payment amounts of less than \$100,000 may elect to distribute the entire amount to county roads and schools as required by Section 17-3-213(5), MCA.

One of the options provided in the Act for the 15% to 20% balance is referred to as "Title II". When a county elects to allocate funds for Title II projects, a Resource Advisory Committee (RAC) must be established. A RAC reviews Title II projects proposed by a county and, in turn, proposes projects and funding to the Secretary of Agriculture. Funding for Title II projects is remitted to the counties only after approval of a project by the Secretary of Agriculture. In the case of projects that are to be completed in a single year, the total project amount is transferred from the Federal Department of Agriculture to the counties. In the case of a multi-year project, only the amount to be used in one fiscal year will be transferred. Any project funds reserved and remaining unobligated at year-end will be available as part of the project submissions for the next fiscal year.

One of the other options provided in the Act for the 15% to 20% balance is referred to as "Title III." Title III projects may be approved by a county only following a 45-day public comment period. Prior to the public comment period, the county must publish a description of the proposed project in the publications of local record, and must send the proposed project to the RAC, **if one exists for the county**. If the county allocates a portion of its Forest Reserve moneys to Title III projects only, a RAC is not required to be established. If, however, a RAC is established for a Title II project allocation, a Title III project proposed by the same county must be sent to the RAC. There is, however, no requirement that the RAC approve the county's Title III proposal.

(Note to Auditor: This program is excluded from coverage under OMB Circular A-87 "Cost Principles for States, Local, and Indian Tribal Governments" and OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments".)

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III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

COUNTIES ELECTING TO RECEIVE THE “25% PAYMENT”:

1. Compliance Requirements:

- If a county elects to continue receiving the 25% payment, all Forest Reserve funds received must be distributed as follows: **(Note: This portion of Forest Reserve moneys is referred to as “Title I” funds.)**
 - a. 66 2/3% to county road fund (BARS Fund #2110)
 - b. 33 1/3% to the following countywide school levies, based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds:
 - county equalization for elementary schools provided for in 20-9-331, MCA (BARS Fund #7530)
 - county equalization for high schools provided for in 20-9-333, MCA (BARS Fund #7532)
 - county transportation fund provided for in 20-10-146, MCA (BARS Fund #7820)
 - elementary retirement fund provided for in 20-9-501, MCA (BARS Fund #7840)
 - high school retirement fund provided for in 20-9-501, MCA (BARS Fund #7830)
- (Section 17-3-213(2), (5) & (6), MCA)
- The portion of the Forest Reserve moneys retained by the county government itself is required to be deposited to the county **(Note: See Compliance Requirement No. 3 below)** road fund. The county road fund shall only be used for the construction, repair, and maintenance of all public highways within the boundaries of the county that are outside the corporate limits of any city or town and that are not either state or federal highways. (Section 7-14-2513, MCA)

Suggested Audit Procedures:

- Test the county's distribution of each payment to determine if the money was allocated 66 2/3% to the county road fund and 33 1/3% to the countywide school levied funds listed above. **(Note: The State Auditor’s Office generally distributes Forest Reserve moneys to the counties in two separate payments.)**
- As part of the testing of road fund expenditures, determine that road fund expenditures are only made for the construction, repair, and maintenance of public highways within the boundaries of the county that are outside the corporate limits of any city or town and that are not either state or federal highways.
- Test the distribution to the countywide school levied funds noted above to determine if the 33 1/3% was allocated based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds.

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III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

COUNTIES ELECTING TO RECEIVE THE “25% PAYMENT” - continued:

2. Compliance Requirement:

- Whenever the total Forest Reserve money available for apportionment to the countywide school funds listed previously is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned to those countywide school funds in the following school year. (Section 17-3-213(6), MCA)

Suggested Audit Procedure:

- For each countywide school fund, determine the total fund levy requirements. If the Forest Reserve funds that were received and were to be apportioned to the fund being tested were in excess of that amount, determine that the excess was transferred to a separate reserve account to be reapportioned in the ensuing school fiscal year to the levies designated in Section 17-3-213(5)(b), MCA.

3. Compliance Requirements:

- If the county has special road districts created under Section 7-14-2121, MCA, the commissioners must distribute a proportionate share of the 66 2/3% distributed for the county road fund under Section 17-3-213(5), MCA, to the special road districts. The allocation to each district is required to be based on the percentage that the total area of the road district bears to the total area of the entire county. (Section 17-3-213(7), MCA)

Suggested Audit Procedures:

- Determine if the county has any special road districts.
- If one or more special road districts have been established, determine the total area of the entire county and the area of each special road district.
- For each such road district, test to determine whether the 66 2/3% of the funds have been distributed to the special road districts within the county and the county general road fund based on the percentage that the total area of the road district bears to the total area of the entire county.

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III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

COUNTIES ELECTING TO RECEIVE THE FULL PAYMENT AMOUNT:

4. Compliance Requirements:

- If a county elects to receive the full payment amount, a minimum of 80% up to a maximum of 85% of the county's full payment must be designated by the county for distribution in the same manner in which the 25% payments are required to be expended. **(Note: See Compliance Requirement No. 1 above)** If the total distribution of Forest Reserve funds to a county is less than \$100,000, the county may elect to expend the entire amount in this manner. **(Note: This portion of Forest Reserve moneys is referred to as "Title I" funds.)** (PL 106-393, Section 102(d))
- With the exception of a county receiving less than \$100,000, the county must elect, on an annual basis, one of the following options for the remaining 15% to 20% balance:
 - a. Reserve the balance for projects in accordance with Title II of the Act (These funds are deposited in a special account in the US Treasury and are available for expenditure without further appropriation.)
 - b. Reserve the balance for projects in accordance with Title III of the Act. (These funds are reserved by the county.)
 - c. Reserve the balance for projects in accordance with both Title II and Title III of the Act, or
 - d. Return the balance to the US Treasury.**(Note: If the county fails to make an election by September 30 of each year, the county is deemed to have elected to expend 85% in the same manner as the 25% payments, and will remit the balance to the U.S. Treasury.)**
 (PL 106-393, Section 102(d))

Suggested Audit Procedure:

- For the 80% to 85% portion of the full payment amount, see the suggested audit procedures under Compliance Requirements Nos. 1 through 3, above.
- Review the county's records to determine what election the county has made to expend the remaining 15% to 20% of its annual Forest Reserve funds and Public Law 106-393 funds. The following compliance requirements and suggested audit procedures address the options under Title II projects and Title III projects as referred to above.

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III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TITLE II PROJECTS:

5. Compliance Requirements:

- A county must submit its Title II project proposals to a resource advisory committee (RAC). The RAC reviews the proposed projects and submits approved projects to the Secretary of Agriculture. The Secretary, in turn, approves or rejects projects. The RAC is composed of 15 individuals representative of three community interest categories as specified in Section 205 of Public Law 106-393. A project may only be proposed to the Secretary of Agriculture if it has been approved by a majority of members from each of the three categories. All meetings of the RAC must be announced at least one week in advance in a local newspaper of record and must be open to the public. Records of the RAC meetings must be made available for public inspection. (PL 106-393, Section 205)
- Title II project monies may be used solely for the purpose of entering into and implementing cooperative agreements with willing Federal agencies, State and local governments, private and nonprofit entities, and landowners for protection, restoration and enhancement of fish and wildlife habitat, and other resource objectives consistent with the purposes of the Act on Federal lands and on non-Federal lands where projects would benefit these resources on Federal land. Types of allowable projects include:
 - a. Road maintenance and decommissioning;
 - b. Stream and watershed restoration (At least 50% of funds service wide must go for #a and #b);
 - c. Maintaining infrastructure, including trails;
 - d. Forest ecosystem stewardship;
 - e. Land health and water quality;
 - f. Control of noxious or exotic weeds;
 - g. Other projects consistent with the Forest Plan, including fish and wildlife habitat and restoring native species.

(PL 106-393, Sections 204(a) & 202, and Flowchart on U.S. Department of Agriculture website: www.fs.fed.us/payments)

(Note: Project funds may also be used to pay for an environmental review, consultation, or compliance with applicable environmental laws required in connection with the project. - PL 106-393, Section 204(b))
- The following are also considered to be allowable costs for Title II monies:
 - a. Monitoring of projects – Monitoring is a required component of project proposals (See PL 106-393, Section 203(b)(6))
 - b. Costs of pilot projects involving the sale of merchantable material (See PL 106-393, Section 204(e)(3))

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TITLE II PROJECTS - continued:

5. Compliance Requirements - continued:

- c. RAC expenses such as travel & per diem, meeting rooms, and facilitators (Q & A for PL 106-393 on U.S. Department of Agriculture website – See address above.)

Suggested Audit Procedures:

- On a sample basis, verify that meetings of the Resource Advisory Committee were open to the public, and that public notice of the meetings was made at least one week in advance.
- Obtain the minutes of the RAC meetings, and review to ensure that any projects recommended to the Secretary of Agriculture were first approved by a majority of members from each of the three community interest categories.
- Verify that Title II monies were expended for only those allowable purposes discussed above.

TITLE III PROJECTS:

6. Compliance Requirements:

- Title III projects may be approved by a county only following a 45-day public comment period. Prior to the public comment period, the county must publish a description of the proposed project in the publications of local record, and must send the proposed project to the RAC, if one exists for the county. If the county allocates a portion of its Forest Reserve moneys to Title III projects only, a RAC is not required to be established. If, however, a RAC is established for a Title II project allocation, a Title III project proposed by the same county must be sent to the RAC. There is no requirement that the RAC approve the county's Title III proposal. (PL 106-393, Section 302(a))
- Title III project monies may be used only for:
 - a. Search, rescue and emergency services – An eligible county or applicable sheriff's department may use these funds as reimbursement for search and rescue and other emergency services, including fire fighting, performed on Federal lands and paid for by the county. (**Note In the case of an expenditure that is necessary for search and rescue activities on both county and Federal lands, Title III funds may be expended in proportion to the relative use of the expenditure on Federal land. (Q & A for PL 106-393 on U.S. Department of Agriculture website – See website address above.)**)

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III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TITLE III PROJECTS - continued:

6. Compliance Requirements - continued:

- b. Community service work camps – An eligible county may use these funds as reimbursement for all or part of the costs incurred by the county to pay the salaries and benefits of county employees who supervise adults or juveniles performing mandatory community service on Federal lands
 - c. Easement purchases – An eligible county may use these funds to acquire easements, on a willing seller basis, to provide for nonmotorized access to public lands for hunting, fishing, and other recreational purposes; conservation easements; or both.
 - d. Forest-related educational opportunities – A county may use these funds to establish and conduct forest-related after school programs.
 - e. Fire prevention and county planning – A county may use these funds for efforts to educate homeowners in fire-sensitive ecosystems about the consequences of wildfires and techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires; and planning efforts to reduce or mitigate the impact of development on adjacent Federal lands and to increase the protection of people and property from wildfires.
 - f. Community forestry – A county may use these funds towards non-Federal cost-share requirements of section 9 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2105)
(PL 106-393, Section 302(b) and Flowchart on U.S. Department of Agriculture – See website address above.)
- A county may also use Title III monies for the non-federal component of a federal matching grant, as long as the purpose of the federal matching grant is consistent with one of the authorized uses of funds under Title III. (Q & A for PL 106-393 on U.S. Department of Agriculture website – See website address above.)

Suggested Audit Procedures:

- Verify that the county provided for a 45-day public comment period before approving a Title III project, and that the county published a description of the proposed project in the local newspapers.
- If a Review Advisory Committee (RAC) was established for the county, verify that the county commissioners sent a copy of the proposed project to the RAC.
- Verify that Title III monies were expended for only those purposes discussed above.